

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7220 of 1995

WITH

SPECIAL CIVIL APPLICATION NO.8302 OF 1995

WITH

SPECIAL CIVIL APPLICATION NO.8113 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?

No.

UDYOG BHARTI

Versus

NAVINCHANDRA P SIDHPURA

Appearance:

MR MR TUSHAR MEHTA for Petitioner
M/S THAKKAR ASSOC. for Respondent No. 1, 2, 3, 4, 5,
6, 7, 8, 9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,
24,25,26,27,28

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 31/03/99

ORAL JUDGEMENT

These three petitions are interconnected and are raising identical issue between the parties, who are employer and its workmen, who were dismissed for participating in the illegal strike on 14-3-1985.

2. The petitioners of Special Civil Application No. 7220/95 is by the employer and Special Civil Application No. 8302/95 is cross petition by the workmen as parties to the impugned award dated 23-6-1995 in Ref. L.C.R. No. 1120/86 to 1124/86, 1128 to 1149/86 and 1151/86. These petitions relate to the dismissal of 28 workmen who had not participated in the inquiry pursuant to the notice for holding the inquiry on the alleged misconduct of participating in the illegal strike.

3. Special Civil Application No. 8113 of 1995 is filed by the employer against the award dated 9-8-95 in Reference L.C.R. Nos. 1125/86, 1126/86 and 1127/86 concerning three workmen who participated in the inquiry against the misconduct of participation in illegal strike which resulted in their dismissal on 14-6-1985. The Labour Court in both the respective awards found the inquiry to be just and proper and misconduct of participating in the illegal strike proved. However, the labour court found the punishment of dismissal to be harsh and has ordered reinstatement of workmen excluding Nirmlaben Shingala with 10% back wages. While the employer in Special Civil Applications No. 7220/95 and 8113/95 has challenged the order of reinstatement of workmen with 10% back wages. Whereas the employees in Special Civil Application No.8392/96 has challenged the denial of back wages to the extent of 90%

4. Learned counsel for the petitioner has urged that the disciplinary inquiry has been found to be just and fair and misconduct is found to be proved on the material which has come on record at Annexure-A during the inquiry. It is a managerial function to impose punishment and it is not for the Industrial Court or Tribunal to interfere with it ordinarily. The learned counsel for the petitioner has also urged that the participation in the illegal strike itself is sufficient to impose punishment, but the fact that the delinquent workmen indulged in continuous strike for long period even after the strike was prohibited by the order of the Government dated 1-6-1985 made u/s 10 (3) of the

Industrial Disputes Act which makes it a grave misconduct which justifies dismissal. Once dismissal is justified no interference is called for.

5. It has been urged on behalf of the workmen that merely participation in the illegal strike without anything more ordinarily did not justify the punishment of dismissal. In the circumstances, no attempt has been made by the employer to take the employees on duty who participated in the strike prior to resorting to the disciplinary action of punishment of dismissal. The learned counsel for the workmen urged that the denial of back wages to the extent of 90% is too harsh.

6. I have carefully considered the rival contentions. There cannot be any dispute about the principle. However, it cannot be said that the Labour Court has no jurisdiction to interfere with the punishment. U/s 11-A of the Industrial Disputes Act, where an industrial dispute relating to discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labor Court, Tribunal or National Tribunal, as the case may be, is satisfied that that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Ordinarily the managerial authority in the matter of awarding punishment cannot be interfered with where the domestic inquiry is found just and fair and misconduct alleged is proved, unless the same is found to be disproportionate to guilt proved. Where the domestic inquiry is found defective or absolutely one sided, the employer can yet justify the order of dismissal, discharge or termination by adducing the material before the Labour Court. What is required is to be seen is whether exercise of discretion vested in the Tribunal is a judicious or arbitrary one.

7. Ordinarily, exercise of discretion if it is judicious and on well settled principles of law is not liable to be interfered with by judicial review in exercise of extra ordinary jurisdiction. In the present case, all the charges levelled against the workmen regarding participation in the illegal strike are proved. From the material on record and the averments made in the petition and absence of the efforts on the part of the

employer to persuade the women not to continue with the strike after the same was prohibited on 1-6-1985 is found to be missing which has major and relevant factor while considering whether the punishment of dismissal in the case of participation in the illegal strike can be said to be justified. In this connection, reference may be made to the case of Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor, Sabha and Others, reported in AIR 1980 SC 1896. The facts of which had close similarity with the case at hand. Large number of workmen were dismissed by the Company for participating in the illegal strike. On the matter being referred for adjudication to the Arbitrator u/s 10 A, the order of punishment was upheld and was not interfered with. That award of the Tribunal was challenged before the High Court. The High Court by resorting to the provisions u/s 11-A found misconduct of participation in the illegal strike to be proved but set aside the order of dismissal finding it to be too harsh and granted reinstatement. The judgment of the High Court was upheld by the Supreme Court in appeal. It was made clear by quoting from earlier decision of the Court in Crompton Greaves Ltd. Vs. Workmen, reported in AIR 1978 SC 1989 that it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers.

8. In the matter of justification of dismissal by way of punishment for participation in illegal strike the Court reaffirmed the principle stated in India General Navigation & Rly. Co. Ltd. reported in 1960 SC 219 and reiterated in Oriental Textile Finishing Mills, Amritsar Vs. Labour Court Jullundur AIR 1977 SC 277 that :

"Mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the workers taking part in the strike."

9. The Court also laid down the ambit of jurisdiction of Labour Court in case no inquiry is held before dismissing a workman :

"The action taken under the general law or the standing orders, was illegal in the absence of individualized charge-sheet, proper hearing and personalized punishment, if found guilty. None of these steps having been taken, the discharge orders were stillborn. But the Management could as in this case it did, offer to make out the delinquency of the employees and the arbitrator

had, in such cases, the full jurisdiction to adjudge de novo both guilt and punishment."

10. In this context, where misconduct of participation in illegal strike is proved against the concerned workmen, but while considering that punishment of dismissal is too harsh the question of awarding lesser punishment arises for consideration. Ordinarily, where a termination is found to be invalid as void ab initio, equivalent to non est, 'reinstatement with full back wages' is not applicable in such circumstances. In such circumstances, Industrial Court while directing reinstatement has jurisdiction to impose conditions attached thereto as well as to impose lesser punishment in lieu of the punishment. In such cases, it is not the intention of Legislature to allow the delinquent to go unpunished. It is well recognized where the workmen are not wholly blameless or the strike is unjustified or illegal the Industrial Court may well slice off a part of the back wages. Extent of such slicing in the very nature of things is in the discretion of the Tribunal to be extended keeping in view of the facts and circumstances of each case, which constitute complex variables.

11. Following observations may usefully be referred to from Gujarat Steel Tubes Ltd. (supra) :

"The Industrial Court may well slice off a part if the workmen are not wholly blameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is, therefore, a variable dependent dependent on a complex of circumstances."

12. Keeping in view the aforesaid principle viz. in case an order of dismissal is bad under the general law for want of a fair inquiry or nonadherence to principle of natural justice, but delinquency of the workman is established by the employer before the adjudicator, the adjudicator becomes the final arbiter of whole controversy viz. finding of guilt as well as punishment and that mere participation in illegal strike without something further, they may be liable to be punished but dismissal is not ordinarily justified, and that where the workmen are not found wholly blameless the ratio of reinstatement with full back wages does not operate as a matter of course, but rests in discretion of the Tribunal exercising jurisdiction, I am of the opinion that the Labour Court has not exercised its jurisdiction injudicious or arbitrarily, in setting aside the order of

dismissal and awarding only 10% of back wages because it found the workmen to be guilty of participating in illegal strike so as to warrant interference with it in these petitions.

13. While no interference is called for with the awards made under challenge in three petitions, namely reinstatement of the workmen with 10% back wages, it is directed that 10% of back wages shall not be paid to the workmen immediately but shall be subject to condition stated hereinafter. It shall be deposited in separate accounts in the name of each of the workmen in the nationalized or scheduled bank in fixed deposit for a period of one year at the first instant and to be renewed upto three years. To any workman on being reinstated the amount of back wages shall be payable to him only on completion of three years service on reinstatement with effect from rejoining. On completion of the said period the amount shall be paid to them with accrued interest there. Except in case of superannuation, death or termination of service by the employer no amount shall be payable to reinstated workman if they leave the service before expiry of three years. In case of said eventuality the amount of such deposit shall become payable to the concerned workman along with accrued interest thereon. Rule is made absolute to the aforesaid extent in three petitions. The petitions accordingly stands disposed of. In the circumstances, there is no order as to costs.

14. Learned counsel for the workmen Mrs. Pahwa states that a Civil Application in Special Civil Application No.7220/95 has been filed claiming benefit u/S 17B of the Act. It is submitted that the fact that workmen were not employed after the award is disputed by filing reply thereof. As a matter of entitlement to claim benefit u/s 17B relates to the period during which the award as to reinstatement proceedings were pending before the Court. This Civil Application will have to be decided independently. This Civil Application may be placed for orders on 16-6-1999.

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/JVSatwara/